AFTER RECESS.

ELECTION ACTS.

Hon. A. S. HARDY, in moving the second reading of the Bill relating to the Election Acts and respecting the Legislative Assembly, called the attention of the House to the points with which the Bill would deal. The first three clauses are intended to provide for a case similar to that of the East Simcoe case, where the judges have differed—where they have not been able to come to a common decision—and this points out that in case the matter is taken to the Court of Appeal the Registrar shall report the judgment or decision of that Court as the judgment of the case, or they may refer the matter back to the rota judges, for the purpose of having their opinions or judgment carried out. If that had been done in the East Simcoe case there would probably have been no difficulty there. The House will remember during the present session the difficulties that have arisen under the clause as it stands, viz., that where the matter has gone to the Court of Appeal, the judges below having differed, that Court has taken the position that it only comes before them as interlocutory, and that it is not an appeal in which they are entitled to give a judgment which finally determines the case, but it is their duty to decide the points in dispute, and then refer back to the rota Court for the purpose of having its decision carried out.

THE ROTA JUDGES HAVING

taken the position that their duty is ended when they have given their judgment, and as their Court was dead they declined to meet for the purpose of giving effect to the judgment of the Court of Appeal. The first section of the Act will settle the matter so far as the difficulty has arisen in the East Simcoe case, in the East Northumberland case, and that in East Middlesex. The first section of the Act provides that the Registrar of the Court of Appeal may notify the Speaker of the House the decision of the judges in any case, or if there be no Speaker of the House then the Clerk of the House in the same manner as the trial judges should have done. Sub-section 2 provides that "instead of determining all questions of law or fact, the Court of Appeal may refer the case back to the trial judges, with such declarations and directions as the said Court of Appeal may think fit: and the trial judges shall thereupon dispose of the case (including costs) in accordance with, and so as to give effect to, such declarations and directions, and the said trial judges shall certify to the Speaker or Clerk as the case may require." Section 2 deals with section 161 of the Controverted Elections Act where a report has been made that a candidate has been guilty of one corrupt practice, or where one has been committed with his knowledge or consent. Section 162 leaves it open to the Court to define or rather relieve the candidate from the disqualification provided that the judges agree that the

OFFENCE WAS NOT OF MAGNITUDE;

that it was one committed in what one might call involuntary ignorance. Now it has been held that where one judge has found that a candidate has been guilty of an act under clause 161, unless the two judges of the Court of Appeal agree that it is one which, under the next clause, the candidate might be relieved from disqualification, he is subject to disqualification. That is to say that the opinion of one judge has the effect of disqualification. If that were the law the House tried to rectify it last session when the House unanimously said that the opinion of one judge, where two were necessary to try a case, should not be sufficient to disqualify a candidate. Section 5 of the Act takes the language of the Act passed in the Dominion Parliament to relieve Sir Charles Tupper from the penalties which would have followed his taking his seat in the House, and relieves Mr. Dowling from the penalties—if there were any—and places him in the position it was intended he should occupy last session. He concluded by moving the second reading of the Bill.

Mr. MEREDITH said the Government should have dealt with the East Simcoe case at the beginning of the session and taken steps immediately on the assembling of the House to have a writ issued, and he accused the Government of responsibility because the constituency was not represented this session. He then condemned the Act as it effected Mr. Dowling, and claimed that it would have been equally fair to have removed the disqualification of Dr. Dowling.

Hon. O. MOWAT—It has long been observed that when my hon. friend has no case at all it is then he is most vigorous in the language that he employs. He is always most furious when there is no ground whatever for being furious. Now, the hon. member pretends to be very indignant because he says in the Bill of my hon. friend changes have been made which have the effect of giving advantages to the Reform party. The hon. gentleman should be slow to complain when his own party has done that which he charges us with doing to such an extent that he dare not deny it himself. The hon. member, with all his leanings in favour of his party, told us in his place that he could not defend what was done at Ottawa. Even he admits that the Act at Ottawa was so bad that he could not defend it, yet he pretends that he is very indignant at that sort of thing when he is being injured, but he rejoices over it when his friends are to be benefitted by it. On what ground was this gerrymander at Ottawa justified? That it was to secure the election of the greatest possible number of Conservatives and the smallest possible number of Reformers was acknowledged on all hands. It was not disputed in the Parliament or in the Conservative organs throughout the country. It was the avowed purpose of the Act. It was intended to do everything that could be done to crush out the Reform party, everything the Conservative party could to say the Reform representatives should be as few as possible.

Mr. CARNEGIE—A bad case.

Hon. O. MOWAT—A very bad case; an indefensible case. Now, the changes we have made we believe are defensible, apart altogether from party consideration. There is not a change we have made here that if you place the facts before any independent person, and leave politics out of consideration altogether, who would not say it is a reasonable measure. The change is one in every case in the right direction. Why, that is not merely theory on my part, that is not a mere unfounded allegation on my part, for we know that the Independents who have spoken out have said our Bill was not a gerrymander. The independent journals throughout the country unanimously, as far as I have seen, have expressed the opinion that it was not a gerrymander, and to compare it with that most infamous of all Bills at Ottawa shows the moral obliquity to which that party is prepared to go. Now, my hon. friend referred to the case of Mr. Fauquier, and he says that inasmuch as we have not brought in a Bill for the purpose of removing Mr. Fauquier's disqualification it is wrong to bring in a Bill to remove the disqualification against Mr. Dowling. My hon. friend has read some observations made by the dissenting judge in Mr. Fauquier's case, but my hon. friend would have come to a different conclusion if he had read with equal fairness the expressions of the other judges. It was not on a mere technical ground that Mr. Fauquier was disqualified. In his case there was the grossest bribery and the grossest corruption, and the judges were satisfied that Mr. Fauquier did not know he did nor chose to know. He wished to take advantage of all the iniquity which was being done, and wanted to keep out of knowing what was being done. Now all the principles of law and morals agree that if I don't choose to know details of what wrong is being done in my behalf, I am as bad as if I did know them. And that was Mr. Fauquier's position. Now, what was Dr. Dowling's position? We all know that there was no bribery committed at his election. Both trial judges of the court agreed that there was no iniquity committed, and that there were no grounds for saying or supposing that there had been any extensive corruption. What was the act with which Dr. Dowling was charged? What was the ground on which one of the judges held that his seat had been voided? There was no act of bribery done by him or his agents. There was nothing done for his benefit which was illegal, and concerning which he desired to know nothing, but simply that the travelling expenses of some of the voters had been paid, Now, for a long time this was

HELD TO BE ALLOWABLE

in England, and at the present time it is allowed in some cases. There was no moral culpability in this. That is the first difference between Dr. Dowling's case and Mr. Fauquier's. And now for the second point of difference, and that is the point upon which disqualification turned. It would be absurd to say that two judges should be necessary to find a man guilty of a technical fault, and only one to find a man guilty of an offence which would disqualify him, where two judges are necessary for the trial. I think that if this point had been brought before the Legislature there would have been no hesitation at all in saying that two judges should be necessary to find a candidate guilty of moral obliquity. If the House finds that he has not been guilty of moral obliquity, then there should be no hesitation of relieving him of the consequences following the view of the law which has been taken by the judges. And it is thought that Dr. Dowling should be relieved by statute since there is no power in the executive to do so. It would be monstrous not to relieve Dr. Dowling whether he belonged to one party or the other. My hon. friend has referred to the circumstances under which the

ACT WAS PASSED LAST SESSION.

It is quite true I pointed out that as the Bill was introduced there was not a single clause of retrospective action in the Bill. The retrospective clause was added after its introduction. I say now what I said then, that I do not like *ex post facto* legislation. But even Legislature has occasionally to pass *ex post facto* laws. That has often been done in England, and in every colony which has the power to make laws. Though it is occasionally necessary in the interests of equity and justice that such legislation should be passed, one does not like to pass such laws for the reason that they may be perverted to such improper uses, but I cannot imagine a case in which such legislation is more needed in the interests of justice and right than in the case of Dr. Dowling. My hon. friend has referred to the case of Sir Charles Tupper, and he says that it is entirely different from the present Act. He says that it does not come under the Election Law. Well, if it does not come under the Election Law it comes under a law for the independence of Parliament, and under that law his friends apprehended that his seat would be vacated. Rather than subject him to the trouble and the danger of a new election the friends of Sir Charles Tupper passed an Act to keep him in his seat. Now Dr. Dowling has not been saved the trouble or the danger of a new election. He has had three elections. My hon. friend has charged that I wrote a letter to prevent the free exercise of the will of the people. Let us see what the people said about it. At the first election Dr. Dowling was returned by a majority of about one hundred, at the next election he was returned by a majority between three and four hundred, and at the third election he had a majority of between seven and eight hundred. The letter was written for the purpose of enabling the people to have just such a representative as they themselves chose to have, and my hon. friend is indignant that I did not write a letter that would take away from the electors the free exercise of their judgment. My hon. friend refers also to the clause in the Bill which provides for a new election in East Simcoe. It must be remembered that Mr. Drury had a large majority. He is not charged with any personal misconduct, or that he was a party to any misconduct that he knew of, or that he wished to close his eyes and shut his ears to anything which was being done in his behalf contrary to the law. It was the act of his agent without his knowledge or consent which the judges declared voided his election. It must be remembered also that if this matter had not occurred in an election the man who was held to be an agent for Mr. Drury would not have been held to be an agent at all. Under the ordinary law an agent who does that which is illegal does not bind his principal, but the law makes the agency in election cases of a much more extensive character, so that the judges held that Mr. Drury must be unseated because a man whom

THE LAW DEFINES AS HIS AGENT

had done something which was illegal, but concerning which he did not know anything, and did not profit by it. Everyone admits that if a man is condemned on a technical ground then he has a right to take advantage of all the technicalities in his favour, so that if the law says that a certain procedure shall be observed in order to vacate his seat then he had a right to insist upon every technicality being observed. I don't think then that anybody could have blamed Mr. Drury had he taken his seat. There was no personal misconduct alleged against him, and therefore we did not think it right that the seat should be vacated without his having an opportunity of being heard in his own behalf, and we propose now to relieve him of the technical difficulty by declaring the seat vacant. I am sure that the grounds upon which we rely for the House to pass the Bill will be such as to commend themselves to anyone who is not blinded by partyism.

Mr. MORRIS said the people of Ontario would recognize in the legislation affecting the elections this session, measures for the retention of a perpetual oligarchy in power. He opposed this measure because it interfered with the action of the courts.

THE FRANCHISE BILL.

Hon. C. F. FRASER, in moving the second reading of the Bill to extend the franchise, said: I do not intend at this late stage of the session to make anything like a speech. I propose briefly, however, to point out again the effect of this Bill upon the franchise, and to compare it in some respects with other propositions which have come from other sources for the same purpose. I desire to say that this Bill, in a very great degree goes towards conferring the franchise upon every British subject in this Province of Ontario who is a resident and who is 21 years of age. Of course I am referring to those who are really subjects of Her Majesty, and who are really men. My hon. friend from North Middlesex (Mr. Waters) would have the franchise conferred on the women of the Province to a limited extent. His convictions are, I understand, as embodied in the Bill which he has proposed, that those women who are unmarried, even by reason of their once having been married and being no longer so, or by their never being married at all, and having the necessary property qualification that to them the franchise should be extended. It is known that the hon. gentleman and I differ widely on this particular feature of the franchise, and I may say that the Government have considered very fully this proposition, and that the conclusion which we have arrived at is that having regard to the large extension of the franchise which is now proposed the Government would not assume the responsibility of carrying through any Bill to which there would be attached the proposition of my hon. friend. The Government thinks, after consideration, it is a matter that ought to be decided entirely on its own merits, and I hope that inasmuch as this very great stride is being taken in regard to the franchise, nothing will be done to cripple its coming into operation in this Province by attempting to attach to it anything with reference to the extension of the franchise to women. That is a greater consideration than any involved in this Bill, and I apprehend it will be better dealt with if considered by itself. I say that this Bill is going far towards conferring the